

10/18/95

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

BEFORE THE ADMINISTRATOR

IN THE MATTER OF)	
)	
PETROLEUM WHOLESALE, INC.))	DOCKET NO. UST6-93-100-AO-1
)	
Respondent)	

ORDER

Currently pending in this proceeding, is the ruling on complainant's motion for partial accelerated decision (PAD). In an oral order on August 24, 1995, the undersigned Administrative Law Judge (ALJ) stayed the prehearing exchange until the ruling on the PAD. Reference is now made to respondent's motion of October 13, 1995, seeking to quash complainant's Resource Conservation and Recovery Act (RCRA) Section 9005(a) information request. The basis for this motion is that complainant's information request is a "blatant circumvention" of the stay on the prehearing exchange and is designed to obtain further discovery without the showing mandated pursuant to 40 C.F.R. § 22.19(f).¹

Respondent's arguments are not persuasive. To the extent of any conflict, the statute prevails over EPA's regulations. Section 9005(a) of RCRA, specifically provides that for purposes of enforcing any provision of the underground storage tank subchapter, any owner of an underground storage tank shall furnish information relating to such tanks, their associated equipment, and their contents upon request by a duly authorized person. 42 U.S.C. §

¹ Complainant has not yet responded in opposition to this motion. However, due to the imminency of respondent's duty to answer the information request and the ruling in complainant's favor, such response is not necessary.

IN THE MATTER OF PETROLEUM WHOLESALE, INC., Respondent
Docket No. UST6-93-100-AO-1

Certificate of Service

I certify that the foregoing Order, dated 10/18/95, was sent this day in the following manner to the below addressees:

Original by Regular Mail to: Ms. Lorena S. Vaughn
Regional Hearing Clerk
U.S. Environmental Protection
Agency, Region 6
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Marion Walzel
Marion Walzel
Legal Staff Assistant

Dated: Oct. 18, 1995